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HARRISBURG, PA

FEB 20 2003

MARY E. D'ANDREA, CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

Civil No. 1:01-CV-0817

(Judge William W. Caldwell)

(M.J. Malachy E. Mannion) ✓

**CORRECTIONS DEFENDANTS'
MOTION FOR AN ENLARGEMENT OF TIME**

The Corrections Defendants, by and through their attorney, John J. Talaber, Assistant Counsel, Pennsylvania Department of Corrections, pursuant to Fed.R.Civ.P. 6(b) respectfully requests this Honorable Court to grant an enlargement of time: (1) until Tuesday, February 25, 2003, for their Brief in Support and Statement of Material Facts relating to Plaintiff's Medical Claims; and (2) until Friday, February 28, 2003, for their Brief in Support and Statement of Material Facts relating to Plaintiff's non-Medical Claims. In the alternative, Defendants request and enlargement of time for both Briefs and Statements of Material Facts until Monday, March 3, 2003, so that they can be filed using the Court's new Electronic Filing system. The following averments are made in support of this Motion:

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Parties and Nature of Action:

1. Plaintiff Kim Smith is an inmate currently incarcerated at the State Correctional Institution at Coal Township ("SCI-Coal Township"). See Amended Complaint (doc. 20), p. 12.
2. The Department of Corrections Defendants ("Corrections Defendants") include: (1) Kathy Allen; (2) Nancy Ambrose; (3) Mary Bernas; (4) Sharon Burks; (5) Kandis Dascani; (6) John Dunn; (7) Harry Ersek; (8) Frank Gillis; (9) Robert Glenney; (10) Robert Gooler; (11) Dr. Robyn Johns; (12) Roy Johnson; (13) Tim Jordan; (14) Bernon Lane; (15) John Learn; (16) Edward Mason; (17) Miller; (18) James Morgan; (19) Wilma Sewell; (20) Raymond Smith; (21) David Varano; (22) Voeckler; (23) George Weaver; (24) Lynn Wolfgang; (25) Gerald Whysong; (26) Pat Yarger; (27) Angela Zimmerman; and (28) Hazel Zimmerman. See Amended Complaint, pp. 1-16.
3. Smith also names as Defendants Wexford Health Services, Inc. and Dr. Ronald Long, who are represented by James D. Young, Esquire. See Entry of Appearance (doc. 28).
4. In this 42 U.S.C. §1983 action, Smith alleges that the Corrections Defendants violated his First, Eighth, and Fourteenth Amendment rights under the United States Constitution. See Amended Complaint, pp. 1-16.

5. Smith is suing the Corrections Defendants in their individual capacities. See Amended Complaint, p.8.
6. Smith seeks injunctive relief, as well as, compensatory and punitive damages. See Amended Complaint, pp. 1-16.

Relevant Procedural History:

7. Smith initiated this action with the filing of a Complaint and an Application for In Forma Pauperis status on May 10, 2001. See Complaint (doc. 1); Application to proceed IFP (doc. 2).
8. The Court, by Order dated June 6, 2001, directed Smith to file an Amended Complaint on or before July 6, 2001. See Order (doc. 8).
9. On July 11, 2001, Smith filed an Amended Complaint. See Amended Complaint (doc. 20).
10. On August 3, 2001, the Court found that Smith's Amended Complaint substantially complied with its previous orders, and directed the Clerk of Court to serve process on the Defendants. See Order (doc. 24).
11. On or about September 26, 2001, the undersigned attorney waived service of summons for the Corrections Defendants.
12. On November 6, 2001, the Corrections Defendants waived their right to reply to Smith's Amended Complaint pursuant to 42 U.S.C. §1997(e). See Waiver of Reply (doc. 33).

13. On October 24, 2002, the Court granted the Defendants' Motion for discovery and dispositive motion deadlines; specifically, the Court directed that discovery be completed on or before November 12, 2002, and dispositive motions filed by December 13, 2002. (doc. 89)
14. On December 13, 2002, the Corrections Defendants' filed a Motion for Summary Judgment. (doc. 99)
15. The Defendants, after three Motions for Enlargement of Time, filed a Motion to Sever the action for purposes of their Briefs in Support to the Motion for Summary Judgment. (docs. 103, 105, 111, 113, 117, 121, 124)
16. The Court, by Order dated February 11, 2003, granted Defendants Motion to Sever and directed the Briefs to be filed on or before February 20, 2003.

Motion for Enlargement:

17. The Corrections Defendants, by and through their undersigned attorney, respectfully request an enlargement of time until Tuesday, February 25, 2003, for the Brief in Support and Statement of Material Facts relating to Plaintiff's Medical claims. Additionally, the Corrections Defendants request an enlargement of time until Friday, February 28, 2003, to file their Brief in Support and Statement of Material Facts relating to Plaintiff's non-medical claims.

18. In the alternative, given that this Honorable Court's Electronic Filing program is scheduled to commence on March 1, 2003, and in the interests of avoiding making unnecessary copies of documents that will ultimately be scanned in by the Clerk of Courts of this Honorable Court, the Corrections Defendants request that an enlargement of time for both Briefs and Statements of Material Facts be granted until March 3, 2003.
19. Federal Rule of Civil Procedure 6(b) provides, in part, that "[w]hen by these rules . . . an act required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . order the period enlarged if request therefore is made before the expiration of the period originally prescribed"
20. Counsel for the Corrections Defendants is very close to completing the Statements of Material Facts and the Supporting Briefs; however, his efforts were severely hampered by the unexpected President's Day weekend snowstorm that kept him away from the Office over the weekend and for two other days. Additionally, the storm affected the ability of counsel's legal assistant to work with counsel in completing declarations for clients and witnesses related to Plaintiff's multiple claims.
21. Consequently, counsel is working evenings and this weekend to make-up the lost time so that declarations relating to this case can be signed, with the

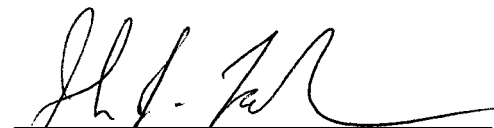
Statements of Material Facts and Briefs filed.

22. Regarding, the March 3, 2003 request, counsel submits that given the documentation that will be filed rebutting Plaintiff's claims, it may be easier for the Court to have the material in electronic format; particularly, the Briefs. Plaintiff, of course, will receive a paper copy of the filings, as will Mr. Young, if he so desires and does not want the electronic version.
23. Finally, counsel sincerely appreciates the leave and patience this Court (and counsel) has given in this matter, especially in light of the personal family situation counsel encountered in late January 2003.

WHEREFORE, for the reasons set forth above, the Corrections Defendants respectfully request this FINAL motion for an enlargement of time under February 25, 2003 and February 28, 2003, or March 3, 2003 to file their Statements of Material Facts and Supporting Briefs to their Motion for Summary Judgment.

Respectfully submitted,
Office of General Counsel

BY:



John J. Talaber
Assistant Counsel
Pa. Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Attorney No. 83279

Dated: February 20, 2003

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Civil No. 1:01-0817

(Judge William W. Caldwell)

(Magistrate Judge Malachy E. Mannion)

JURY TRIAL DEMANDED

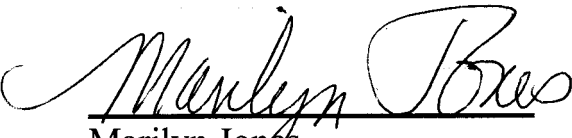
CERTIFICATE OF SERVICE

I undersigned hereby certify that a copy of the Corrections Defendants' Motion for an Enlargement of Time in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020

James D. Young, Esquire
Lavery, Faherty, Young and Patterson, P.C.
301 Market Street
P.O. Box 1245
Harrisburg, PA 17108-1245


Marilyn Jones
Clerk Typist II

PA Department of Corrections
55 Utley Drive
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Dated: February 20, 2003